

### REMARKS

Claims 18-81 are pending, with claims 18, 25, 42, 59, 60, 61, 64 and 65 being independent. Claims 18-24, 60-63, 66-69, and 78-81 have been withdrawn from further consideration by the Examiner. Claims 25, 42, 59, and 64 have been amended.

#### Statement of the Substance of the Interview

Applicant appreciates the courtesies extended to Applicant's representative, Matthew T. Shanley, during a telephone conversation conducted on September 13, 2006 and a personal interview conducted on October 19, 2006. While the merits of the present application were not discussed during the telephone conversation, Applicant's representative and the Examiner arranged a formal interview for October 19, 2006 to discuss the Examiner's interpretation of the Banko reference. During the personal interview, Applicant's representative discussed several shortcomings with respect to the Banko reference. Specifically, Banko does not describe or suggest a cutting instrument that includes the inner member defining an aspiration opening, the aspiration opening being located at a proximal portion of the helical knife, as recited in claims 29 and 64; and a cutting instrument that includes the pitch of the helical channel changing from the distal end to the proximal end, as recited in claims 31 and 65. Applicant's representative requested that the Examiner identify actual evidence of these features within the Banko reference upon entry and consideration of this response. The specifics of any issues discussed with the Examiner during the personal interview are repeated hereinafter under the appropriate headings.

#### Claim Rejections Under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims 25-43, 45-59, 64-65 and 70-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Banko (U.S. 3,732,858). Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banko. These rejections are respectfully traversed.

Claims 25 and 59

Claims 25 and 59, as amended, recite, in part, that the helical knife edge is arranged relative to the cutting edge such that the edges align in a plane substantially perpendicular to a longitudinal axis of the instrument to create shearing therebetween.

Applicant requests that this rejection be withdrawn because Banko does not describe or suggest at least this feature of claims 25 and 59.

In Banko, cutting apparently occurs by relative movement between the inner and outer jaws. Even if this cutting results from a shearing action between the helical groove 130b of the inner jaw and the edge of the side opening of the outer jaw, the helical groove and the edge of the side opening do not align in a plane substantially perpendicular to a longitudinal axis of the device. Rather, as can be seen in Fig. 10 of Banko, the helical groove 130b of the inner jaw and the edge of the side opening of the outer jaw align along the longitudinal axis of the device.

Therefore, claims 25 and 59 are patentable over Banko for at least this reason.

Claim 42

Independent claim 42, recites, in part, that the slicing edge of the helical knife has a V-shaped cross section perpendicular to a longitudinal extent of the slicing edge.

Applicant submits that Banko does not describe or suggest at least this feature of claim 42.

On page 3 of the non-final office action dated June 29, 2006, the Examiner has stated that "it is noted that fig. 10 of Banko can be clearly defined an inner member (42b) including a shaft having a helical knife (130) with a v-shaped (v-shaped is considered from the left end of helical knife 130b to the right end of segment 130b) that defined a sharp, slicing edge." Any v-shape that there may be from the left end to right end of the helical groove 130b (applicant does not concede that there is such a shape) is not perpendicular to a longitudinal extent of the edge of the groove. Furthermore, the outer edge of the helical groove 130b is relatively blunt or flat, as can be seen in Fig. 10 (and Fig. 12, 130c) of Banko.

Accordingly, claim 42 is patentable over Banko for at least this reason.

Claim 64

Independent claim 64, recites, in part, a cutting instrument including an outer member having an opening at least partially bounded by a sharp cutting edge and a helical knife coupled to the outer member for rotation relative to the outer member. An inner member is received within the outer member, and the helical knife is located at a distal portion of the inner member. The inner member defines an aspiration opening therein located at a proximal portion of the helical knife.

As discussed during the personal interview, the alleged inner member, e.g., the helical groove 130b, is not described or suggested as defining an aspiration opening therein. During the interview, the Examiner indicated that the analogous aspiration opening of Banko was generally shown by elements 106a,b,c,d (port holes) in Banko. However, helical groove 130b does not define elements 106a,b,c,d therein, rather outer jaw member 54b defines the elements (Fig. 10, Banko).

Accordingly, claim 64 is patentable over Banko for at least this reason.

Claim 65

Independent claim 65, recites, in part, a cutting instrument including an outer member having an opening at least partially bounded by a sharp cutting edge, and a helical knife coupled to the outer member for rotation relative to the outer member. The helical knife includes an edge configured to slice into tissue. The edge of the helical knife comprises a helical channel having a proximal end, a distal end, and a pitch. The pitch of the helical channel changes from the distal end to the proximal end.

As discussed during the personal interview, Banko does not describe or suggest that the helical groove 130b, which the Examiner has equated to the recited helical knife, has a helical channel with a pitch changing from the distal end to the proximal end. Accordingly, this rejection should be withdrawn.

Therefore, claim 65 is patentable over Banko for at least this reason.

Applicant does not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, however, Applicant may have not addressed all characterizations of the art and reserves the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by Applicant to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicant's comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Applicant submits that all of the claims of the present application should be allowed.

The fees in the amount of \$1020 are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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